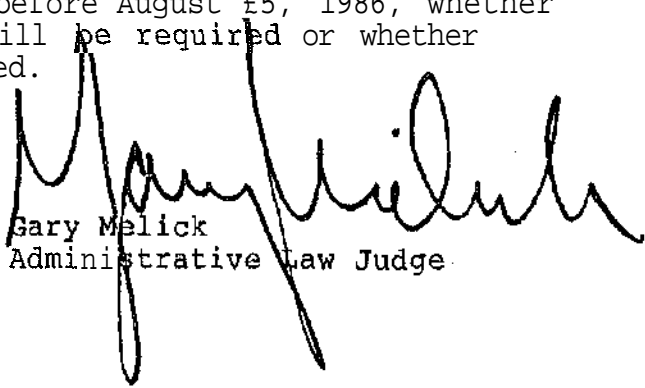


The results of dust sampling performed in the laboratory are not disputed. On September 25, 1984, only .4 milligram of respirable dust per cubic meter was found. Subsequent tests performed during regular lab activities on October 1, 1984, on samples taken from various parts of the laboratory showed respirable dust ranging from .1 to .3 milligram per cubic meter. Samples taken from the laboratory on March 11, 1985, showed respirable dust ranging from .1 to .2 milligram per cubic meter with .4 milligram per cubic meter in the area of the hood. It is not disputed that .1 milligram of respirable dust per cubic meter is equivalent to the amount of dust found in the "ambient air" of a normal environment. Indeed Ms. Perando concedes that she knew the respirable dust levels in the lab were within the "normal range."

Considering that Ms. Perando knew that there were no abnormal dust levels in the lab and considering that she had the same alleged symptoms of her illness whether or not she was working in the lab I cannot conclude that her belief that the lab environment was hazardous was either reasonable or held in good faith. I note moreover that she continued to have the same symptoms even a year after leaving the laboratory.

Her lack of a good faith belief that the lab presented a hazardous health environment is also demonstrated by the fact that she wore her respirator only part of the time she was working. In addition her practices became such that co-workers could determine in advance when she would not be working a full day by the fact that she would appear on those days without her lunch. It may reasonably be inferred from this practice that she may have been malingering. Under the circumstances I find that Ms. Perando's alleged inability to work in the lab was not based on either a reasonable or a good faith belief in a hazardous condition. Her complaint in this regard of discrimination under section 105(c)(1) of the Act is accordingly denied.

The complaint herein is thus granted in part and denied in part and further proceedings may be necessary to establish corresponding damages, costs and interest. The parties are accordingly directed to confer regarding these matters and to advise the undersigned on or before August 15, 1986, whether further evidentiary hearings will be required or whether those matters can be stipulated.



Gary Melick
Administrative Law Judge